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REMARKS

This communication is considered fully responsive to the Office action mailed January 25, 2005. Claims 1-16, 22, 23, 26-28, 30 and 31 were examined and stand rejected. Claims 1, 2, 5, 6 and 14 are amended. Claims 11 and 34-66 are cancelled. Claims 67-76 are added. Claims 17-21, 24, 25, 29 and 32-33 were withdrawn from consideration. Respectfully requested are reexamination and reconsideration of claims 1-10, 12-16, 22, 23, 26-28, 30 and 31 as well as examination of claims 67-76.

Note, only 42 total claims remain pending of a previously paid for 66 total, and only 8 independent claims remain pending of a previously paid for 9. Thus, no fee is due.

Election/Restriction

The Applicant notes the Examiner's comments concerning claims 24, 25, 29, 32 and 33 as having been added to the list of claims withdrawn from consideration.

Claim Rejections – 35 U.S.C. §102

Claims 1, 2, 5, 6, 9-11, 14 and 26-28 stand rejected under 35 U.S.C. §102(a) as being purportedly unpatentable over U.S. Patent No. 6,204,858 to Gupta et al. ("Gupta"). The Applicant traverses the rejections.

Independent claims 1 and 5 recite in part that "the classifying of pixels is performed without specifying use of a *particular* color in the red-eye defect" (emphasis added here). The Applicant respectfully submits that the Gupta reference, while disclosing a method for color adjustment involving red eye images, nevertheless fails to disclose or suggest doing so "without specifying use of a particular color" during red eye identification. The Office points to Gupta, col. 4, lines 42-59 as allegedly disclosing "classifying ... without reference to a specific color in the red-eye defect". The Applicant respectfully disagrees.

Gupta always teaches the use of the red color in identifying the red eye defect. The Office-cited passage of Gupta is in accord; see lines 45-46 of col. 4 (using "the dot product of the *red enhanced color data* for the image ..." (emphasis added)).

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Indeed, other non-specific colors are taught in col. 4 of Gupta in use for identifying ***backgrounds***, but these are not used "***in*** the red-eye defect." (Emphasis added.)

For at least the foregoing reasons, Gupta fails to disclose or suggest the recited features of claims 1 and 5. Therefore, Gupta fails to anticipate or make obvious the invention of claims 1 and 5, and the Applicant requests allowance thereof.

Claims 2-4, 6-10, 12, 13, 22, 23, 26-28, 30 and 31 depend from either of claims 1 and 5, which are allowable as set forth above. As such, claims 2-4, 6-10, 12, 13, 22, 23, 26-28, 30 and 31 are believed allowable for at least the same reasons as claims 1 and 5, and the Applicant earnestly requests that claims 2-4, 6-10, 12, 13, 22, 23, 26-28, 30 and 31 be allowed.

Independent claim 14 was rejected for purportedly the same reasons as for claims 1 and 5. However, as with claims 1 and 5, Gupta still requires use of a particular color which is not the case with claim 1, 5 or 14. Thus, Gupta fails to anticipate or make obvious the invention of claim 14, and the Applicant requests allowance thereof.

Claims 15 and 16 stand rejected under 35 U.S.C. §102(b) as being purportedly unpatentable over of U.S. Patent No. 5,432,863 to Benati ("Benati"). The Applicant traverses the rejection.

Independent claims 1 and 5 recite in part the use of "a predetermined measure of central tendency computed for each respective channel" in the selection of the one channel from the plurality of channels. The Applicant respectfully submits that the Benati reference, while disclosing a method for color adjustment involving red eye images, nevertheless fails to disclose or suggest doing so using any "central tendency". The Examiner points particularly to Benati, col. 6, line 15 – col. 7, line 25 as allegedly disclosing the use of such a "central tendency". The Applicant respectfully disagrees.

Benati does not teach or suggest a "central tendency" in this passage; rather, what is taught is a scoring system for scoring pixels, the scoring system resulting in values ranging from 0.0 to 1.0. No central tendency is taught or suggested.

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For at least the foregoing reasons, Benati fails to disclose or suggest the recited features of claims 15 and 16. Therefore, Benati fails to anticipate or make obvious the invention of claims 15 and 16, and the Applicant requests allowance thereof.

Claim Rejections – 35 U.S.C. §103

Claims 3, 4, 7, 8, 12 and 13 stand rejected under 35 U.S.C. §103(a) as being purportedly unpatentable over U.S. Patent No. 6,204,858 to Gupta ("Gupta"); and claims 22, 23, 30 and 31 purportedly unpatentable over Gupta in further view of U.S. Patent No. 5,432,863 to Benati ("Benati"). The Applicant traverses the rejection.

Claims 3, 4, 7, 8, 12 and 13 depend from either of claims 1 or 5, which are shown to be allowable over Gupta as described above. As such, claims 3, 4, 7, 8, 12 and 13 are believed allowable for at least the same reasons as claims 1 and/or 5, and the Applicant earnestly requests that claims 3, 4, 7, 8, 12 and 13 be allowed.

Next, the Examiner takes "Official Notice" to use ratios involving the lightest and darkest channels and to use various segmentations to identify the pixels of interest. Applicant objects to such Official Notice as improperly taken here as the principal point of rejection for claims 3, 4, 7, 8, 12 and 13. "It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." MPEP 2144.03(A) citing *In re Zurko*, 258 F.3d 1379 at 1385, 59 USPQ2d 1693 at 1697. Note also that such a rejection is contrary to all of the basic concepts for determining patentability, whether for computer-implemented inventions or otherwise. See e.g., MPEP 2106 and *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 149 F. 3d 1368, 47 USPQ2d 1596, (Fed. Cir. 1998), *inter alia*. Thus, this rejection must be withdrawn, or "the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding." See 37 CFR 1.104(d)(2) and MPEP 2144.03.

As to claims 22, 23, 30 and 31, the asserted combination of Gupta with Benati is in error as well. There is no suggestion or motivation identified in or from the art to make the combination. A mere conclusory statement in hindsight that "[d]oing so would improve efficiency and accuracy" (Office Action, page 5, lines 11-12) is insufficient.

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Therefore, claims 3, 4, 7, 8, 12, 13, 22, 23, 30 and 31 are not obvious in view of Gupta alone nor in view of Benati. Applicant thus respectfully requests allowance of claims 3, 4, 7, 8, 12, 13, 22, 23, 30 and 31.

New Claims

New claims 67-76 are patentable over Inoue for substantially the same reasons as stated for claims 1-10, 12-16, 22, 23, 26-28, 30 and 31 above.

Conclusion

Based on the amendments and remarks herein, the Applicant respectfully requests prompt issuance of a notice of allowance for claims 1-10, 12-16, 22, 23, 26-28, 30 and 31 in this matter.

Respectfully Submitted,

Dated: April 25, 2005 By: _____

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